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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,274	03/12/2004	J. Stuart Cumming	i3533.4041	1320

34313 7590 04/02/2007  
ORRICK, HERRINGTON & SUTCLIFFE, LLP  
IP PROSECUTION DEPARTMENT  
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IRVINE, CA 92614-2558

EXAMINER
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WILLSE, DAVID H

ART UNIT	PAPER NUMBER
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3738

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/02/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

ED

**Office Action Summary**

Application No.

10/800,274

Applicant(s)

CUMMING, J. STUART

Examiner

Dave Willse

Art Unit

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>8-3-04; 9-28-05; 10-3-05</u> . | 6) <input type="checkbox"/> Other: _____  |

In the Information Disclosure Statement of August 3, 2004, the French patent cannot be considered because a concise explanation of the relevance (37 C.F.R. § 1.98(a)(3)) and a complete copy (37 C.F.R. § 1.98(a)(2)) was not presented. The third drawing sheet is missing, and there is no English language abstract.

The substitute abstract of April 5, 2004, is objected to because it was not submitted on a separate page, and on line 3, "rigid" should apparently be replaced by --rigidly--. Correction is required (MPEP § 608.01(b)).

The disclosure is objected to because on page 3, the Brief Description of the Drawings fails to mention Figures 2A and 3A. Also, the (abandoned) status of parent application serial number 10/242,977 should be updated at the beginning of the specification. Appropriate correction is required.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8, 11-15, and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sambursky, US 5,919,230, in view of Haworth, EP 0 375 176 A1. Sambursky discloses a single solid flexible optic 20 (column 4, lines 26-28) having a thickness substantially less than a

natural human lens (Figures 4 and 5; column 5, lines 19-21; etc.) and at least two solid rigid haptics **101** and **102** (Figure 7; column 5, lines 17-19; etc.) to form a lens that is longitudinally flexible for insertion into an eye (column 3, lines 16-19). Sambursky apparently lacks posterior positioning or vaulting of the optic **20**, but such was common in the art, as seen from Haworth, for example. To so modify the Sambursky implant would have been obvious from the advantages taught by Haworth at column 4, lines 22-32, with further motivation having been provided by the desire of Sambursky to pull the posterior capsule in tight apposition to the lens optic (column 6, lines 15-18). Regarding claim 2 and others, the particular thickness would have been obvious to the ordinary practitioner from the variety of materials (and hence refractive indices) listed and the range of prescriptions inherently involved and in order to facilitate insertion through an incision as small as approximately 2.5mm (column 4, lines 8-13). Regarding claim 13 and others, the modified Sambursky device is *capable* of being moved (along with the capsular bag) by pressure differentials, whether or not such was the intent. Regarding claims 18-20, the haptics may alternatively be equated with the plate portions **106**, rigidified by the rigid bars **101** and **102**.

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cumming, WO 01/10354 A1, which discloses all the elements except for the optic being solid and the haptics being rigid. Solid optics, however, were prevalent in the art and would have been obvious in order to attain low thickness levels yet impart sufficiently high refractive indices (page 3, line 24 et seq.), and the loop portions **26** (page 6, lines 3-8) being more rigid would have been an obvious variant in order to enhance movement of the rigid lens with the periphery of the capsular bag (page 2, lines 15-17; page 6, lines 15-18).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dave Willse whose telephone number is 571-272-4762 and who is generally available Monday through Thursday and often on Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



**Dave Willse**  
**Primary Examiner**  
**Art Unit 3738**